



AF ZZW

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/056,494

Filing Date: January 28, 2002

Appellants(s): Cramer, William P.

Herman H. Bains
For Appellant

APPELLANT'S REPLY BRIEF

Appellant's Reply Brief
Applicant: Cramer, William P.

APPELLANT'S REPLY

Appellant's claimed process uses the interstate highway system as a virtual grid system in efficiently distributing energy, especially petroleum products. The petroleum pipeline and other energy carrying conducts are buried in the median of the interstate highway or in the interstate highway right-of-way next adjacent the highway. This distribution process extends a major portion of the length of an interstate highway for any interstate highway.

In the Examiner's Answer, the grounds for the final rejection of the claims are reasserted. The Examiner contends that the claimed process was clearly known as expressed in the anticipation rejections under 35 USC 102 by the Colonel Pipeline Company (CPC) documents, the Federal Highway Administration Program Guide (FHWA) documents, and the Building the Future-Proof Telco (BFPT) documents.

As an alternative to the anticipation rejection, the Examiner contends that in view of the disclosure of CPC, it would be a matter of design choice to one ordinary skill in the art to place the pipeline under the median of the highway since this "choice" would involve nothing more than laying the pipeline from a "point a" to a "point b". It is noteworthy that no mention is made in this rejection as to where in CPC there is a suggestion, explicit or implicit, to a petroleum pipeline engineer (one of ordinary skill in this art) to lay a pipeline in the median of an interstate highway.

Appellant's Reply Brief
Applicant: Cramer, William P.

Appellant again contends that CPC, FHWA and BFPT do not disclose the claimed process and therefore do not and cannot anticipate this process under 35USC 102. Appellant also restates his contention that the claimed process is not obvious under 35 USC 103 in view of the disclosure of CPC.

In response to appellant's contentions, the Examiner hypothesizes that "where economical and environmental studies are positive, and all permissions and land rights are obtained, a pipeline may be laid anywhere, including the median of a interstate highway system." (emphasis added). This conclusion appears to bear no relation to the respective disclosures of CPC, FHWA, and BFPT.

After concluding that the use of underground pipelines is well known, the Examiner contends that a pipeline may be laid anywhere including the median of a interstate highway system if economical and environmental studies are positive, and all permissions and land rights are obtained. All that is required for one of ordinary skill in art (pipeline route designer) to select the median of an interstate highway system as the pipeline route, is an awareness of the general requirements needed from authorities in laying pipelines. No case authorities, statutory provision or prior art is apparently needed as bases for making this rejection.

Appellant's claimed process is intended as the efficient national distribution of energy, especially petroleum products. While some pipelines may intersect an interstate highway, no underground pipeline has ever been located in the median of an interstate highway.

Appellant's Reply Brief
Applicant: Cramer, William P.

Appellant contends that the claimed process is novel and unobvious.

The Examiner argues that the main pipeline of CPC which is more 5300 miles long appears to track interstate highway 85 because of the locations of the marketing terminals at Birmingham, Doraville, Spartanburg, Charlotte and Greensboro. Interstate highway does not pass through Birmingham. At best, the main pipeline (5300 miles long) tracks interstate highway 85 for probably no more than 350 miles. There is no showing in the CPC documents or any other evidence of record as to how close the main pipeline is to interstate highway 85.

Is the pipeline within a thousand (1000) feet or one hundred feet (100) of the highway? Where are the marketing terminals relative to the interstate highway 85?

However, the Examiner contends (Examiner's Answer, pg. 5) that, given the disclosure of the CPC documents, "[T]herefore, it is possible and is capable of laying pipeline in the median of an interstate highway system." (emphasis added). Further, the Examiner contends (Examiner's Answer, pg. 5) that, given the disclosure of the FHWA documents, "therefore, it is possible to bury such pipelines in the median or right-of-way of an interstate highway system for any desired or specified length". (emphases added).

Appellant's Reply Brief
Applicant: Cramer, William

Anticipation by the prior art references (CPC and FHWA documents) must be demonstrated by clear and convincing evidence. Jamesbury Corp. v Litton Industrial Products, Inc. 756 F.2d 1556, 225 USPQ 253 (Fed. Cir. 1985). The content of the prior art, whether inherent or otherwise, must clearly and convincingly disclose the claimed invention.

These conclusions seem to belie the contention that the CPC and FHWA documents anticipate the claimed invention. The possibility that the disclosures of these prior art references (CPE and FHWA documents) might be altered to meet (anticipate) the claimed limitations renders the references incapable of serving as anticipating prior art. In order to anticipate, a single prior art reference must show every claimed process step and not the possibility of changing the prior art disclosure to provide the missing steps. Moreover, there is no suggestion of this possibility, i.e., laying the pipeline within the interstate highway median, within the contexts of these references.

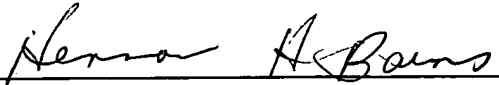
In sum, it is appellant's content that the anticipation rejection based on the disclosures of the CPC and FHWA documents is clearly erroneous and should be reversed.

Appellant also contends that the Future-Proof Telco reference does not disclose placing the pipelines within the right-of-way of an interstate highway for major portion of the length. Further, there is no suggestion to one of ordinary skill in the art (pipeline route engineer) of doing this. Accordingly, it is appellant's contention that the anticipation rejection based on the disclosure of Future-Proof Telco is clearly erroneous and should be reversed.

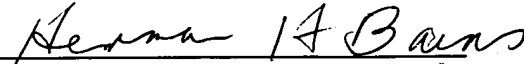
Appellant's Reply Brief
Applicant: Cramer, William P.

In view of the arguments submitted in Appellant's Brief and in Appellant's Reply, Appellant contends that rejections of the claims based on the CPC, FHWA and Future-Proof Telco are clearly erroneous and should be reversed. To the extent that any rejection involves a question of law, appellant contends that such a rejection is erroneous and should be reversed.

Respectfully submitted


By Herman H. Bains, Reg. No. 19,330
6101 Tracy Avenue
Minneapolis, MN 55436
Phone (952)929-9362 Fax (952)929-9362
e-mail hnbains@aol.com

I hereby certify that Appellant's Reply Brief (3 copies) is being deposited with the US Postal Service as first class mail in an envelope addressed to: Mail Stop Appeal Brief-Patents, Comm. for Patents, PO Box 1450 Alexandria, VA 22313-1450.
Dated May 8, 2006.


Person Signing